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January 3, 1995

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*Executive Director*

Mr. G--- A. W---  
M---, D---, B--- & E---  
--- --- Center  
--- ---, CA XXXXX

Dear Mr. W---:

This is in reply to your letter of November 30, 1994, in which you asked a followup question with respect to our letter of November 28, 1994 to your partner, R--- E---, regarding the sales and use tax consequences of a sale of the R--- database software group by D--- E--- Corporation ("D---") to O--- Corporation ("O---").

Your original letter stated O--- would make a duplicate copy of the source code in New Hampshire on new blank media and retain it in New Hampshire for more than 90 days before delivery to the escrow agent in California. Your November 30, 1994 letter explained the parties would like to have this duplicate copy delivered to the escrow agent in California before 90 days have elapsed.

We agree with your conclusion that the time of O---'s delivery of duplicate copy of the source code to the escrow agent in California does not affect the taxability of the original sale of the tangible media containing the original source code. We understand that the original tangible media will continue to be located and used in New Hampshire by O--- for at least 100 days after its purchase. Therefore, we would consider that O--- does not purchase that tangible personal property for use in California. O---'s later use of that property is not subject to use tax.

Mr. G--- A. W---

-2-

January 3, 1995  
325.0012.350

We note, however, that if the duplicate copy of the source code is brought into California within 90 days after the blank media was purchased by O---, then the cost of that blank media plus the cost, if any, of copying the source code onto that media (but not the cost or value of the source code itself) would be subject to California use tax.

Very truly yours,

Ronald L. Dick  
Senior Tax Counsel

RLD:sr